IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Criminal Revision No. 419 of 1999

DATE OF DECISION: November 29, 2006.

Vijay Kumar Goenka and another

.....Petititioners.

Vs.

State of Punjab through Insecticide Inspector, Amritsar.

.....Respondent.

PRESENT: Mr.S.R.Verma, Advocate for petitioners.
Mr.G.S.Bhandari, Deputy Advocate General, Punjab for respondent.

JUDGMENT

M.M.Aggarwal, J.

This is a petition for setting aside the order dated 30.10.1998 of CJM Amritsar whereby request of the present petitioners for discharge had been declined.

In this case, complaint (Annexure P-1) for offence under Sections 29 read with Section 3(k)(1),17,18 and 33 of Insecticide Act 1968 and Insecticide Rules 1971 and under Section 420 IPC had been filed by the State through Insecticide Inspector Amritsar. It was against M/s Janta Pesticides Store i.e. Dealer and Goenka Industries as the Manufacturer through Vijay Kumar, Partner, Shyam Lal Goenka, Parner cum Chief Executive and G.L.Kumawat, authorized Signatory/Expert Staff and Suresh Pal Singh Toma

Expert Staff.

As per allegations, sample of Butachlor 50% E.C. (brand name Trishul) had been taken from the Dealer on 20.5.1991. It was found to be misbranded. In this case, accused-petitioners and the Dealer had been charge-sheeted. Criminal Revision Petition bearing No. 819 of 1997 had earlier been filed, which was decided by this Court vide order dated 4.9.1997 (copy Anexure P-3, in which it was held that when offence was committed by a Company then Company was to be charge-sheeted through authorized persons. However, even after that, CJM Amritsar had framed charges vide order dated 30.10.1998 as against Vijay Kumar of the Dealer Firm and then as against Vijay Kumar, Shyam Lal and Goenka Industries.

Counsel for the petitioners had argued that the competent authority gave sanction for prosecution of Dealer i.e. M/s Janta Pesticides Store Tarn Taran and that of Goenka Industries as Manufacturer. There was no sanction for prosecution of Vijay Kumar and Shyam Lal Goenka of the Manufacturer Firm and unless there was sanction for their prosecution, they could not be prosecuted. It is also argued that sanction did not detail full facts of the case. It is also argued that if the prosecution is launched against the Company or the person incharge of the company or any officer of the company, then sanction to prosecute each of them was required. It was argued that sanction was only to prosecute the company and not for the present petitioners i.e. Vijay Kumar, Shyam Lal. Judgments reported as **Vinod Goyal Vs. State of Punjab 1996(2) RCR 336, Consumer Action Group Vs. Cadbury India Ltd and another 2000(1) RCC 548 (SC), M/s Hindustan Pulverising Mills Vs. State of Punjab 2002(1) RCR 461 and Manjit Singh Guliani Vs. State of Punjab 2002 (2) RCR 50** had been relied. The names of Vijay Kumar and Shyam Lal

who have been charge-sheeted does not find mention in the sanction.

Under these circumstances, the petition filed by Vijay Kumar and Shyam Lal Goenka against framing of charge as against them is accepted to the extent that only M/s Goenka Industries manufacturer for whom sanction had been given, shall be facing trial. In this case, Shyam Lal Goenka had filled an affidavit that he is Partner of this Manufacturing Firm. The Manufacturer shall be represented by Shyam Lal Goenka, during trial.

Let amended charge as against Dealer and manufacturer i.e. Goenka Industries through Shyam Lal as Partner, be framed and trial proceed.

(M.M.Aggarwal)
Judge

November 29, 2006
raghav